

Presidential appointees are. If I were an inspector general, I would feel more independent with a two-thirds vote of a bipartisan panel, meaning commission appointees, as opposed to one person. Our amendment assures IGs, if they are terminated, it will be in a public forum and not the back room of the White House, if they are Presidentially appointed.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

AMENDMENT NO. 4114 TO AMENDMENT NO. 4072

(Purpose: To ban naked credit default swaps and for other purposes.)

Mr. DORGAN. Madam President, I send a second-degree amendment to the desk to the Grassley amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Dakota [Mr. DORGAN] proposes an amendment numbered 4114 to amendment No. 4072.

Mr. DORGAN. I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mr. DORGAN. Madam President, the second-degree amendment that I have just sent to the desk to the Grassley amendment is the amendment that there has been an objection to my offering. So it is the only way, apparently, I can offer the amendment. It is the amendment dealing with naked credit default swaps.

We cannot possibly end this discussion without addressing the central issues that caused the near collapse of our economy, one of which is the unbearable speculation, the speculation in exotic financial instruments such as credit default swaps that, by the way, now is on the rise. It is not receding, it is on the rise.

The fourth quarter of last year the credit default swaps were up by 8 percent, \$14 trillion in notional value, up 8 percent in the fourth quarter of last year alone. I also feel very strongly that the issue of too big to fail is a real issue. We cannot just brush it away saying: I wish it was not an issue.

The too-big-to-fail companies have gotten bigger, much bigger. Well, that is not a solution for this country's economy. The issue of betting in the lobby of our banks, as I have said, they might as well put in a Keno table or a blackjack table and wager that way. These are bets, not investments.

There are tens of trillions of dollars' worth of these bets. Because we want to tighten the laces a little on this, this amendment would ban naked credit default swaps over a period of time. Because we want to tighten the laces a bit, we have folks who object to even offering this because it would take on Wall Street. Well, you know what. That is what this legislation is about. If we go back to 2008 when Wall Street

lost—I think, \$36 billion net loss—and they paid out bonuses of \$17 or \$18 billion. They were having a carnival.

What was it all about? It was about big fees, trading all of these unbelievably speculative instruments, things that we had never heard of before—and, by the way, instruments in which they had no insurable interest. I said before you cannot buy fire insurance on someone else's house. You cannot buy life insurance on someone else's life. But what is happening is the biggest financial institutions in this country are buying and selling credit default swaps, are selling insurance policies against bonds that they will never own and have never owned.

It is like buying things they will never get from people who never had it and making fees on both sides of the transaction, except it is building a pyramid of speculation. At some point that pyramid came down and nearly took the entire American economy with it. So we now do something called financial reform.

The central question is, are we going to do it right? Are we going to be tough? Are we going to make sure we get rid of these things, the unbelievable speculation that injured this country's economy? There are trillions of dollars of them out there. And, by the way, the five largest commercial banks in this country hold 90 percent of the total credit derivatives, the \$13.2 trillion of credit derivatives. They are owned by the five largest commercial banks.

Somebody said: Well, you cannot ban these things. The banking industry needs them. Oh, really? Well, if that is the case, why are only five companies doing 90 percent of the business in what are called naked credit default swaps?

I will speak about this at another time. I promised my colleague from Maine I would be a minute. I have gone well over the minute. But I will speak about the second-degree amendment at much greater length. It is the only way, apparently, I can offer an amendment.

So I believe that method, using a parliamentary technique that is perfectly legitimate, gives me an opportunity to force a vote on this amendment at some point.

It is an amendment that should have been able to have been offered as a result of an agreement on both sides to deal with real issues, in real time, on one of the most significant challenges that confront our country: how to put this financial system back together again in which the financial industry plays a very important role in the expansion of this country, as opposed to building more and more and more speculation and seeing that too-big-to-fail institutions get bigger and bigger and bigger.

I yield the floor, and I will come back and speak on the second-degree at some point later.

The PRESIDING OFFICER. The Senator from Maine.

AMENDMENT NO. 3883

Ms. SNOWE. Madam President, I rise again to speak on the amendment that is pending that I had offered last week, No. 3883, which I have introduced with my good friend and colleague, Senator PRYOR.

Our amendment would ensure fairness and regulatory transparency for small business in the financial regulatory reform measure that we are now considering. This bipartisan amendment was also cosponsored by my colleagues, Senator GRAHAM, Senator MENENDEZ, Senator FRANKEN, Senator BOND, Senator BURRIS and Senator THUNE.

Our amendment would ensure that this newly created bureau in the bill, the Consumer Financial Protection Bureau, would, before it promulgates proposed rules, fully consider the economic effect that those rules and regulations would impose on our Nation's approximately 30 million small businesses that create 64 percent of all of the net new jobs in America. That certainly has been the case over the last 15 years, and they are the ones that we are depending on to lead us out of this jobless recovery.

Our amendment would designate the Consumer Financial Protection Bureau as a "covered agency" under the Regulatory Flexibility Act—so that small business review panels would apply to the Bureau's rulemaking process. Now, it is critically important to have these advisory small panels that currently only apply to EPA and to OSHA. They have been extremely successful in helping to shape more workable regulations at those agencies for small businesses to be much more attentive to the impact that these statutes are going to have on the well-being of small businesses.

Since 1996, when these small business panel provisions were passed—unanimously, I might add, in the Senate as part of the Small Business Regulatory Enforcement Fairness Act, SBREFA—and signed into law by then-President Clinton, the EPA has convened 35 panels and OSHA has convened 9 panels. The findings of these panel reports have helped EPA and OSHA improve their proposed rules by tailoring regulatory approaches and alternatives to the unique situations of small businesses. And that is very important.

As we look over the number of panels that have been convened over the last 14 years, we have seen there have been rules regarding groundwater, radon in drinking water, arsenic in drinking water, tuberculosis, ergonomics, and the list goes on and on. It has worked exceptionally well in this process for those agencies that obviously could have a tremendous effect on small businesses by creating unintended consequences.

So is it not better to know potential small business effects at the forefront of the regulatory process, not afterwards, in which the small businesses are consumed not only with time but